IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO: 11591 of 2004

Between:

M/s. Mc. Dowell & Co. Ltd., Having its registered office at Mc. Dowell

House, 51 Rich Mond Road, Bangalore-25,
rep. by power of Authority Holder Shri Krishna Swamy Iyenger, S/o. Ranga

Chari, 49 Years, R/o. 345-SRT,
S.R.Nagar, Hyd.

... PETITIONER

AND

1 The State of A.P., Rep. by Prl. Secy, to Revenue Dept., Secretariat, Hyd.
2 The Special Officer and Competent Authority, Urban Land Ceiling,

Visakhapatnam.
3 The District Collector, Visakhapatnam.
4 the Commissioner, Municipal Corporation Visakhapatnam.
5 The Vice Chairman, Visakhapatnam Urban Development Authority,

Visakhaaptnam.
6 The Mandal Revenue Officer, Visakhapatnam Urban Mandal, Visakhapatnam.
7 The S.H.O., Visakhaptnam town, Visakhapatnam.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order more particularly one in the nature of writ of mandamus, for

declaration that the action of the respondents in not entertaining the application of the petitioner company under Section 21 of the Urban Land Ceiling Act, 1976 and in not granting the exemption in favour of the petitioner Company land of an extent of 4.3101 Hectors in Sy.No. 1011/5 of Block No.39 of Waltair Ward, Uplands, Visakhapatnam, from the provisions of the Chapter-III of the Urban Land Ceiling Act, 1976 as illegal, arbitrary and unjust and consequential directions to the respondents to consider the application of the petitioner company sought under section 21 of the urban Land Ceiling Act, 1976 by granting exemption in respect of company land from the provisions of Chapter-III of the Urban Land Ceiling Act, 1976 and further declaration that the Petitioner company irrespective of exemption under section 21 of the Act, is also entitled for general exemption of the land under G.O.Ms.NO. 455 & 456 Revenue UC-II, Dept., DT. 29.7.2002

Counsel for the Petitioner: MR.SATYANARAYANA PALUKURU

Counsel for the Respondents: 1 to 3 and 6: GP FOR REVENUE

Counsel for Respondent No.4: Mr. T.S.V. Ramana

The Court made the following:

THE HON'BLE MR. JUSTICE A. GOPAL REDDY

WRIT PETITION NO.11591 OF 2004

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ORDER:

By means of filling this writ petition under Article 226 of the Constitution of India, petitioner seeks a Mandamus to consider the application filed by it for granting exemption under Section 21 of the Urban Land (Ceiling & Regulation) Act, 1976 (for short 'the Act') and further declaring that the petitioner-company, irrespective of exemption under Section 21 of the Act, is entitled for general exemption in terms of G.O.Ms.Nos.455 and 456 Revenue (UC-II) Department, dated 29-07-2002. Petitioner, a Public Limited Company purchased lands at various places. M/s. Hindustan Polymers Limited, a sick company, which was amalgamated with the petitioner-company, which owns lands at Visakhapatnam, filed declaration under Section 6 and made an application under Section 20 (1) (a) of the Act before the Government seeking exemption in it's favour over an extent of 101.3985 hectares of land at

Venkatapuram, Gopalapatnam and Vepagunta villages and Waltair uplands. Government in G.O.Ms.No.1033 Revenue (UC-III) Department, dated 08-10-1992 granted exemption in it's favour to an extent of 67.2165 hectares, which includes an extent of 4.3101 hectares in S.No.1011/3 situated in Waltair uplands, while taking over 9.74 hectares of land free of cost.

2. After granting such exemption, the District Collector, Visakhapatnam, submitted a report stating that two units of the original declarant company, U.B.Blestomers Limited, U.B.Petrochemicals Limited have been shifted to Gujarat and there is no need for residential accommodation in respect of 4.3101 hectares of Waltair uplands, which was exempted for accommodation of staff quarters, in the said G.O, and requested for cancellation of the same. Petitioner-company, which stepped into the shoes of the original declarant, submitted explanation called for by the Government on the report made by the District Collector requesting to grant exemption to develop the Waltair uplands into an ideal holiday resort. Government not satisfied with the explanation and the exemption granted to the lands admeasuring 4.3101 hectares at Waltair uplands, exempted for the construction of staff quarters to M/s.Hindustan Polymers Limited and the said exemption is not for converting the land as holiday resort by the original declarant, which is in violation of the conditions of exemption granted in G.O.Ms.No.1033, issued orders in G.O.Ms.No.630 Revenue (UC-III) Department, dated 26-07-1997, cancelling the exemption granted for Waltair uplands. Questioning the same, petitioner filed W.P.Nos.23773, 33741 and 9481 of 1999, which were disposed of by this Court by a common order dated 08-09-2000, setting aside the cancellation of the exemption in G.O.Ms.No.630, dated 26-07-1997. Aggrieved by the same, State Government filed W.A.Nos.1282, 1283, 1284 of 2000, and the said appeals filed by the State were allowed by a Division Bench, dismissing Writ Appeal Nos.1576 and 1630 of 2000 filed by

the petitioner, upholding cancellation of the exemption granted in G.O.Ms.No.630, dated 26-07-1997. Petitioner further carried the matter in appeal with Special Leave in S.L.P.Nos.22972 to 22976 of 2001 and the same was dismissed on 03-04-2002. On dismissal of the S.L.P., and review petition on 03-04-2002, petitioner filed declaration under Section 21 of the Act and filed the present Writ Petition.

3. In opposition to the Writ Petition, second respondent filed counter affidavit on behalf of respondents 1 to 3 and 6, stating that on dismissal of the S.L.P, Government has taken over the possession of the surplus vacant land of Hectares 4.3101 hectares and in G.O.Ms.No.431 Revenue (UC-I) Department, dated 27-12-2003 and G.O.Ms.No.136, dated 27-12-2003, allotted the said land to various Government departments. On allowing the Writ Appeals and dismissal of the Writ Petitions, which was confirmed by the Supreme Court, it is not open for the petitioner to come with new pleas and it is not open to contend that the Division Bench, while allowing the Writ Appeals, did not go into the issue of procedure after withdrawal of the exemption under Section 20(2) of the Act and the same runs contrary to Section 20(2) and Rule 3 of the Urban Land (Ceiling and Regulation) Rules and the same is also contrary to the judgment of the Supreme Court. On allowing the writ appeals and dismissal of S.L.P., the present writ petition on different grounds cannot be entertained and once the lands are taken possession of by the Government, granting exemption under Section 21 of the Act for construction of houses to weaker sections and to its staff and general exemption under G.O.Ms.No.s455 and 456 does not arise, once the lands vest with the Government on issuance of the notification under Section 10(3) of the Act.

4. When the Writ Petition is taken up for hearing, learned Government Pleader made available proceedings issued by the

Special Officer-Competent Authority dated 05-08-2004 whereunder, he rejected the application filed under Section 21 of the Act, stating that the claim of the declarant company is not within the purview of provisions of Section 21(1) of the Act and as per Rule 11(b) of the Rules, declaration under Section 21(1) of the Act shall be filed within 1139 days on which, such vacant exempted lands cease to be exempted. The declaration filed under Section 21(1) within the time limit of 1139 days from the date of dismissal of the review petition by the Supreme Court cannot be acceptable since the period has to be calculated from the date on which the land in question ceases to be exempted from the date of the G.O., in which exemption granted earlier has been withdrawn and hence no exemption can be granted under Section 21 of the Act. In effect on rejection of petitioners claim for exemption of the land under Sections 21, the Writ Petition has become infructuous.

5. In spite of bringing the said fact to the notice of the learned counsel, he has not chosen to challenge the rejection order, but, elaborately argued the matter for more than an hour, contending that such rejection is contrary to rule 11(2) of the Rules, and the grounds mentioned for rejection that the said application is not filed within 1139 days is erroneous, since the same was filed within the said period from the date of rejection of the review application by the Supreme Court. It is also not disputed that against the order passed by the competent authority, appeal lies to the Commissioner, Land Revenue under Section 33 of the Act, who can go into the said contentions, viz., whether the application filed by the petitioner under Section 21 is within time or complies with the mandatory requirements of Section 21(1) viz., any scheme approved by such authority as the State Government may by notification in the official Gazette, specified in this behalf for enabling the competent authority to make an inquiry into the claim of the petitioner and in the absence of any such scheme notified, can the petitioner make a declaration, can be gone into by the

appellate authority, if there are necessary pleadings to the said effect. In the absence of necessary pleadings to the said effect and that too rejection of the declaration filed by the petitioner by the competent authority is erroneous, this Court is not inclined to go into the various submissions. Once the main relief is already redressed by disposing of the application, the writ petition is rendered infructuous.

The writ petition is accordingly dismissed. No costs. Leave and liberty is granted to the petitioner to avail the remedy of appeal against the rejection of the declaration, by the competent authority.

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A. **GOPAL REDDY, J**

September ,2004

MRR

To:

1 The Principal Secretary to Government, Revenue Dept State of A.P.,

Secretariat, Hyderabad.
2 The Special Officer and Competent Authority, Urban Land Ceiling,

Visakhapatnam.
3 The District Collector, Visakhapatnam.
4 The Commissioner, Municipal Corporation Visakhapatnam.
5 The Vice Chairman, Visakhapatnam Urban Development Authority,

Visakhaaptnam.
6 The Mandal Revenue Officer, Visakhapatnam Urban Mandal, Visakhapatnam.
7 The S.H.O., Visakhaptnam town, Visakhapatnam.

8 Two C.C. s to the G.P. for Revenue, High Court Buildings, Hyderabad

(OUT).

9 Two C.D. Copies.